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NORTHERN DISTRICT OF CALIFORNIA

Robert S. Green (State Bar No. 136183)
Robert A. Jigarjian (State Bar No. 171107)
GREEN FAUTH & JIGARJIAN, LLP
235 Pine Street, 15th Floor
San Francisco, California 94104
Telephone: (415) 477-6700
Facsimile: (415) 477-6710

SCHIFFRIN & BARROWAY, LLP
Robert B. Weiser
Eric L. Zagar
Three Bala Plaza East, Suite 400
Bala Cynwyd, PA 19004
(610) 667-7706

Attorneys for Plaintiff

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

RICHARD SUSSMAN, Derivately on
Behalf of Nominal Defendant
SAGENT TECHNOLOGY, INC.,

Plaintiff

V.

KENNETH C. GARDNER, BEN C.
BARNES, JOIHN E. ZICKER, SHANDA
BAHLES, KLAUS S. LUFT, ANDRE
BOISVERT, KEITH MAIB, IRVING H.
LICHTENWALD, ALI JENAB, DAVID
N.ELIFF, THOMAS M. LOUNIBOS, W.
VIRGINIA WALKER, RICHARD W.
SHAPERO, and KPMG, LLP,

Defendants,

and

SAGENT TECHNOLOGY, INC.,

Nominal Defendant.

No.

02 0709

RS

SHAREHOLDER DERIVATIVE
COMPLAINT FOR VIOLATION OF
CAL. CORP. CODE § 25402; BREACHES
OF FIDUCIARY DUTIES, WASTE OF
CORPORATE ASSETS, ABUSE OF
CONTROL, AND GROSS
MISMANAGEMENT

JURY TRIAL DEMANDED

VERIFIED DERIVATIVE COMPLAINT

Plaintiff, by his attorneys, submits this Verified Derivative Complaint (the "Complaint") against the defendants named herein.

NATURE OF THE ACTION

1. This is a shareholders' derivative action brought pursuant to F.R.Civ.P. 23.1 for the benefit of nominal defendant Sagent Technology, Inc. ("Sagent" or the "Company") against its entire Board of Directors, certain executive officers, and the Company's outside auditors seeking to remedy defendants' violations of California Corporations Code § 25402, breaches of fiduciary duties, waste of corporate assets, and other violations of law.

JURISDICTION AND VENUE

2. This Court has jurisdiction over all causes of action asserted herein pursuant to 28 U.S.C. § 1332. The activities of the defendants and their co-conspirators as described herein were within the flow of interstate commerce, had a substantial effect on interstate trade and commerce, and used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, telephone communications, and the facilities of the national securities markets.

3. This Court has jurisdiction over each defendant named herein because each defendant is a corporation with its principal place of business located in this district or an individual who has sufficient minimum contacts with this district to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because one or more of the defendants either resides in or maintains executive offices in this district, a substantial portion of the transactions and wrongs complained of herein, including the defendants' primary participation in the wrongful acts detailed herein, occurred in this district, and defendants have received substantial compensation in this district by doing business here and engaging in numerous activities which had an effect in this district.

PARTIES

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2 5. Plaintiff Richard Sussman, a resident of North Carolina, is, and was at all relevant
3 times, a shareholder of nominal defendant Sagent.

4 6. Nominal defendant Sagent is a Delaware corporation with its principal executive
5 offices located at 800 W. El Camino Real, Suite 300, Mountain View, California 94040. According
6 to its public filings, Sagent provides real-time e-business intelligence solutions that enable
7 enterprises to improve customer acquisition and retention and operational effectiveness.

8 7. Defendant Kenneth C. Gardner ("Gardner") served as a director of Sagent from June
9 1995 to January 2002, including serving as Chairman of the Board of Directors of Sagent (the
10 "Board") from August 2000 until his resignation in January 2002. Gardner served as the Company's
11 Chief Technology Officer from August 2000 until his resignation in January 2002 and as the
12 Company's President and Chief Executive Officer from June 1995 to August 2000. From FY1999
13 through FY2000, Gardner received a total of \$590,876 in salary and cash bonuses. Gardner serves as
14 a director of NetAcumen, which paid Sagent a total of \$924,000 during FY1999 and FY2000 for
15 licenses and services rendered. From May 15 to 17, 2001, Gardner, while in possession of material
16 adverse non-public information regarding the Company, sold a total of 100,000 shares of Sagent
17 common stock, reaping proceeds of \$129,390.

18 8. Defendant Shanda Bahles ("Bahles") has served as a director of Sagent since May
19 1995. Bahles is a General Partner of El Dorado Ventures ("El Dorado"), a venture capital firm.
20 Bahles is a member of the Audit Committee of the Board (the "Audit Committee"). From October
21 26, 1999 to May 17, 2001, Bahles and/or El Dorado, while in possession of material adverse non-
22 public information regarding the Company, sold a total of 1,809,529 shares of Sagent common
23 stock, reaping proceeds of \$22,258,020.

24 9. Defendant John E. Zicker ("Zicker") has served as a director of Sagent since June
25 1995 and previously served as the Company's Executive Vice President of Technology and Chief
26 Technology Officer from June 1995 to September 2000. From FY1999 through FY2000, Gardner
27 received a total of \$399,043 in salary and cash bonuses. Zicker continues to provide consulting
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1 services to the Company, for which he receives material fees. From October 26 to November 5,
2 1999, Zicker, while in possession of material adverse non-public information regarding the
3 Company, sold a total of 80,000 shares of Sagent common stock, reaping proceeds of \$752,525.

4 10. Defendant Thomas M. Lounibos ("Lounibos") served as Executive Vice President of
5 Sales and Marketing from 1998 until March 2000. In FY1999, Lounibos received a total of
6 \$422,862 in salary and cash bonuses. From October 25, 1999 to February 29, 2000, Lounibos, while
7 in possession of material adverse non-public information regarding the Company, sold a total of
8 317,097 shares of Sagent common stock, reaping proceeds of \$4,526,010.

9 11. Defendant W. Virginia Walker ("Walker") served as Sagent's Executive Vice
10 President of Finance and Administration and Chief Financial Officer from 1998 to May 2000. From
11 FY1999 through FY2000, Walker received a total of \$413,919 in salary and cash bonuses and
12 options to purchase 70,000 shares of Sagent common stock. From October 26 to November 5, 1999,
13 Walker, while in possession of material adverse non-public information regarding the Company,
14 sold a total of 18,372 shares of Sagent common stock, reaping proceeds of \$250,642.

15 12. Defendant Richard W. Shapero ("Shapero") served as a director of Sagent from May
16 1995 to September 2000. On November 2, 1999, Shapero, while in possession of material adverse
17 non-public information regarding the Company, sold a total of 34,152 shares of Sagent common
18 stock, reaping proceeds of \$587,080.

19 13. Collectively, the defendants identified in paragraphs 7-12 will be referred to herein
20 as the "Selling Defendants."

21 14. Defendant Ben C. Barnes ("Barnes") has served as a director of Sagent and as the
22 Company's President and Chief Executive Officer since August 2000. In FY2000, Barnes received
23 a total of \$946,452 in salary and cash bonuses, 150,000 shares of Sagent restricted stock, and options
24 to purchase 750,000 shares of Sagent common stock.

25 15. Defendant Klaus S. Luft ("Luft") has served as a director of Sagent since April 1999.
26 In November 1999, Sagent acquired Sagent France S.A. ("Sagent France"), the Company's
27 distributor in France, and Sagent Technology GmbH ("Sagent Germany"), the Company's
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1 distributor in Germany, from a partnership in which Luft served as a general partner. Luft's interest
2 in the consideration paid for the acquisitions was 11.85%, or approximately \$331,800. During
3 FY2000, Luft sublet property to Sagent Germany and received rental payments of approximately
4 \$35,000. During FY2000, Sagent Germany provided consulting services to Luft, for which Sagent
5 Germany received approximately \$130,000. Luft is a party to license and maintenance agreements
6 with Sagent Germany.

7 16. Defendant Andre Boisvert ("Boisvert") has served as a director of Sagent since April
8 2001 and as Chairman of the Board since January 2002. Boisvert is a member of the Audit
9 Committee.

10 17. Defendant Keith Maib ("Maib") has served as a director of Sagent since July 1999.
11 Maib is a member of the Audit Committee.

12 18. Defendant Irving H. Lichtenwald ("Lichtenwald") has served as a director of Sagent
13 since September 2001.

14 19. Defendant Ali Jenab ("Jenab") has served as a director of Sagent since November
15 2001.

16 20. Defendant David N. Eliff ("Eliff") served as Sagent's Executive Vice President of
17 Finance and Administration and Chief Financial Officer from May 2000 to November 2001. During
18 FY2000, Eliff received \$127,901 in salary and options to purchase 350,000 shares of Sagent
19 common stock.

20 21. Collectively, the defendants identified in paragraphs 7-12 and 14-20 will be referred
21 to as the "Individual Defendants." The Individual Defendants, through their positions as directors
22 and/or officers of the Company and their receipt of reports, attendance at meetings, and access to all
23 of the Company's books, records and other proprietary information, had responsibility for and
24 therefore were in possession of material non-public information concerning the Company and its
25 operations, finances and business prospects. This material, non-public information included, but was
26 not limited to, the Company's financial condition and growth prospects.
27
28

1 22. Defendant KPMG, LLP ("KPMG") is a public accounting firm that served as
2 Sagent's outside auditor at all times relevant hereto.

3 **DUTIES OF THE INDIVIDUAL DEFENDANTS**

4 23. By reason of their positions as officers, directors, and/or fiduciaries of Sagent and
5 because of their ability to control the business and corporate affairs of Sagent, the Individual
6 Defendants owed Sagent and its shareholders fiduciary obligations of trust, loyalty, and due care,
7 and were and are required to use their utmost ability to control and manage Sagent in a fair, just,
8 honest, and equitable manner. The Individual Defendants were and are required to act in furtherance
9 of the best interests of Sagent and its shareholders so as to benefit all shareholders equally and not in
10 furtherance of their personal interest or benefit. Each director and officer of the Company owes to
11 Sagent and its shareholders the fiduciary duty to exercise good faith and diligence in the
12 administration of the affairs of the Company and in the use and preservation of its property and
13 assets, and the highest obligations of fair dealing. In addition, as officers and/or directors of a
14 publicly held company, the Individual Defendants had a duty to promptly disseminate accurate and
15 truthful information with regard to the Company's operations, performance, services, management,
16 projections and forecasts so that the market price of the Company's stock would be based on truthful
17 and accurate information.

18 24. The Individual Defendants, because of their positions of control and authority as
19 directors and/or officers of Sagent, were able to and did, directly and/or indirectly, exercise control
20 over the wrongful acts complained of herein, as well as the contents of the various public statements
21 issued by the Company. Because of their advisory, executive, managerial, and directorial positions
22 with Sagent, each of the Individual Defendants had access to adverse non-public information about
23 the financial condition, operations, and future business prospects of Sagent.

24 25. At all times relevant hereto, each of the Individual Defendants was the agent of each
25 of the other Individual Defendants and of Sagent, and was at all times acting within the course and
26 scope of such agency.
27
28

1 26. To discharge their duties, the officers and directors of Sagent were required to
2 exercise reasonable and prudent supervision over the management, policies, practices and controls of
3 the financial affairs of the Company. By virtue of such duties, the officers and directors of Sagent
4 were required to, among other things:

- 5 a. ensure that the affairs of Sagent were conducted in an efficient, business-like manner
6 so as to make it possible to provide the highest quality performance of its business;
- 7 b. exercise good faith in establishing and maintaining systems that would allow them to
8 obtain the information necessary to supervise, manage and control Sagent's
9 operations prudently, and, when they were put on notice of potential problems at
10 Sagent, to investigate such problems and take affirmative steps to remedy the
11 problems;
- 12 c. exercise good faith in remaining informed regarding the affairs of Sagent, including,
13 but not limited to, Sagent's internal accounting controls, accounting under Generally
14 Accepted Accounting Principles ("GAAP"), and revenue recognition policies and
15 procedures;
- 16 d. exercise good faith in supervising the preparation and filing of all audits, reports, and
17 other financial information required by law, including periodic financial statements
18 and reports filed with the Securities and Exchange Commission ("SEC"), and in
19 examining and evaluating such audits, reports, and other information concerning the
20 financial affairs of the Company;
- 21 e. ensure that the Company was operated in a diligent, honest and prudent manner and
22 complied with all applicable federal and state laws, rules, regulations and
23 requirements, including acting only within the scope of its legal authority and
24 disseminating truthful and accurate statements to the SEC and the investing public;
25 and
- 26 f. refrain from acting upon material inside corporate information to benefit themselves.

27 27. The Individual Defendants were responsible for establishing and maintaining
28 adequate internal accounting controls for Sagent and for ensuring that the Company's financial
statements were based on accurate financial information. According to SEC rules, to accomplish
the objectives of accurately recording, processing, summarizing and reporting financial data, a
corporation must establish an internal accounting control structure. Pursuant to §13(b)(2) of the
Exchange Act, Sagent was required to:

- 29 (a) make and keep books, records, and accounts, which, in reasonable detail,
30 accurately and fairly reflect the transactions and dispositions of the assets of the
31 issuer; and
- 32 (b) devise and maintain a system of internal accounting controls sufficient to

1 provide reasonable assurances that –

2 (i) transactions are executed in accordance with management's general or
3 specific authorization;

4 (ii) transactions are recorded as necessary ... to permit preparation of
5 financial statements in conformity with generally accepted accounting
6 principles. . . .

7 28. Moreover, according to Appendix D to Statement on Auditing Standards No. 55,
8 ("SAS 55"), management should consider, among other things, such objectives as: (i) making certain
9 that "[t]ransactions are recorded as necessary ... to permit preparation of financial statements in
10 conformity with generally accepted accounting principles ... [and] to maintain accountability for
11 assets;" and (ii) making certain that "[t]he recorded accountability for assets is compared with the
12 existing assets at reasonable intervals and appropriate action is taken with respect to any
13 differences."

14 29. According to SAS 55.13:

15 Establishing and maintaining an internal control structure is an
16 important management responsibility. To provide reasonable
17 assurance that an entity's objectives will be achieved, the internal
18 control structure should be under ongoing supervision by management
19 to determine that it is operating as intended and that it is modified as
20 appropriate for changes in conditions.

21 30. As alleged in detail below, during the period from 1999 to 2001, the Individual
22 Defendants, in violation of GAAP and SEC rules and regulations, failed to implement and maintain
23 an adequate internal accounting control system, and thereby violated their fiduciary duties of loyalty,
24 good faith, and due care.

25 31. The Individual Defendants further breached their duties of loyalty, due care and good
26 faith by: (i) causing or allowing the Company to conduct its business in an unsafe, imprudent and
27 unlawful manner; (ii) causing or allowing the Company to violate federal securities laws by making
28 materially false and misleading statements and issuing false financial statements; and (iii) exposing
Sagent to tens of millions of dollars of losses, as alleged herein.

32. Furthermore, as a result of their responsibility for, and access to, material non-public
information regarding the Company's financial condition, the Individual Defendants knew that the

1 market had been misled by the Company's public disclosures as to the Company's financial results
2 and condition. The Individual Defendants caused the Company to conceal from the investment
3 community, including the Company's public stockholders, the Company's true financial results and
4 condition, which allowed the Selling Defendants to reap insider trading profits through concealment.

5 33. As alleged in detail below, from 1999 to 2001, when the Selling Defendants had
6 material non-public adverse information regarding the Company's financial results and condition,
7 the Selling Defendants breached their fiduciary duties of loyalty and good faith by using material
8 non-public information to sell millions of shares of Sagent common stock at artificially inflated
9 prices, thereby reaping tens of millions of dollars in illegal insider trading proceeds for their personal
10 gain.

11 34. The Individual Defendants were responsible for authorizing, or permitting the
12 authorization of, or failing to monitor, the practices which resulted in the Selling Defendants'
13 misappropriation of confidential corporate information for their own gain. The Individual
14 Defendants breached their duties of loyalty and good faith by allowing the Selling Defendants to
15 place their own personal interests above the Company's and by failing to prevent the Company and
16 its officers and directors from committing acts which would, and did, injure the Company.

17 **CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

18 35. In committing the wrongful acts alleged herein, the Individual Defendants have
19 pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and
20 conspired with one another in furtherance of their common plan or design. In addition to the
21 wrongful conduct herein alleged as giving rise to primary liability, the Individual Defendants further
22 aided and abetted and/or assisted each other in breach of their respective duties as alleged herein.

23 36. During all times relevant hereto, the Individual Defendants collectively and
24 individually initiated a course of conduct which was designed to and did: (i) maintain the Individual
25 Defendants' executive and directorial positions at Sagent and the profits, power and prestige which
26 the Individual Defendants enjoyed as a result of these positions; (ii) deceive the investing public,
27 including shareholders of Sagent, regarding the Individual Defendants' management of Sagent's
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1 operations, financial health and stability, and future business prospects; and (iii) artificially inflate
2 the market price of Sagent common stock. In furtherance of this plan, conspiracy and course of
3 conduct, the Individual Defendants collectively and individually took the actions set forth herein.

4 37. The Individual Defendants engaged in a conspiracy, common enterprise, and/or
5 common course of conduct commencing in 1999 and continuing at least until 2001, during which
6 time the Individual Defendants caused the Company to make inaccurate statements about Sagent's
7 financial performance and future business prospects, while at the same time allowing the Selling
8 Defendants to reap more than \$28.5 million in proceeds from their stock sales.

9 38. The purpose and effect of the Individual Defendants' conspiracy, common enterprise,
10 and/or common course of conduct was, among other things, to disguise the Individual Defendants'
11 violations of law, breaches of fiduciary duty, waste of corporate assets, abuse of control, and gross
12 mismanagement; to conceal adverse information concerning the Company's operations, financial
13 condition, and future business prospects; and to artificially inflate the price of Sagent common stock
14 so they could: (i) protect and enhance their executive and directorial positions and the substantial
15 compensation and prestige they obtained thereby; and (ii) allow the Selling Defendants to reap
16 substantial personal profits from the sale of Sagent common stock.

17 39. The Individual Defendants accomplished their conspiracy, common enterprise, and/or
18 common course of conduct by causing the Company to make inaccurate statements about the
19 Company's financial performance and future business prospects, which had the effect of artificially
20 inflating the price of Sagent common stock. Each of the Individual Defendants was a direct,
21 necessary, and substantial participant in the conspiracy, common enterprise, and/or common course
22 of conduct complained of herein.

23 40. Each of the Individual Defendants aided and abetted and rendered substantial
24 assistance in the wrongs complained of herein. In taking such actions to substantially assist the
25 commission of the wrongdoing complained of herein, each Individual Defendant acted with
26 knowledge of the primary wrongdoing, substantially assisted the accomplishment of that
27 wrongdoing, and was aware of his overall contribution to and furtherance of the wrongdoing.
28

FACTUAL ALLEGATIONS**Sagent Disseminates Materially Misleading and Inaccurate Information
as the Selling Defendants Trade on Inside Information**

41. On October 21, 1999, Sagent issued a press release announcing its financial results for the third quarter of 1999, reporting revenues of \$10 million and net income of \$0.03 per share. In the press release, defendant Gardner stated:

The revenue growth we have achieved has been tremendous. Our revenues have increased each quarter by more than 100% from the comparable period in the previous year and have grown sequentially for each of the eleven quarters since we began shipping Sagent products. Achieving profitability this quarter represents a major milestone for Sagent and it is particularly gratifying because that milestone was achieved on significant license revenue growth. Our revenue growth this quarter was driven by the strong demand for Sagent's complete E-Business Intelligence Solution. Customers are choosing Sagent because we are the only company in the market today offering a complete, tightly integrated, scalable E-Business Intelligence Solution from a single vendor.

42. Sagent's October 21, 1999 announcement had an immediate material effect on the price of Sagent common stock, which rose more than 44%, from \$9.75 to \$14.06, from October 21 to 25, 1999.

43. Beginning on October 25, 1999, just two trading days after Sagent's October 21 announcement caused the price of Sagent common stock to rise, and continuing until November 5, 1999, the Selling Defendants, while in possession of material adverse non-public information regarding the Company, sold more than 1.4 million shares of Sagent common stock, reaping proceeds exceeding \$20.5 million, as follows:

<u>Name</u>	<u>Dates</u>	<u># Shares</u>	<u>Prices</u>	<u>Proceeds</u>
Shanda Bahles	10/26/99- 11/3/99	999,762	\$13.55- \$18.04	\$15,011,662
Thomas Lounibos	10/25/99- 11/1/99	286,097	\$13.20- \$14.56	\$3,950,080
John Zicker	10/26/99- 11/5/99	80,000	\$13.94- \$20.10	\$752,525
Virginia Walker	10/26/99- 11/5/99	18,372	\$13.63- \$19.00	\$250,642
Richard Shapero	11/2/99	34,172	\$16.16- \$17.75	\$587,080

44. On January 19, 2000, Sagent issued a press release announcing its financial results for the fourth quarter of 1999, reporting revenues of \$16 million and net income of \$0.03 per share. In the press release, defendant Gardner stated:

Sagent continued its tremendous revenue growth into the fourth quarter. Our revenues this quarter were driven by the strong demand for Sagent's complete Real-time eBusiness Intelligence solution. Customers are choosing Sagent because we are the only company in the market today offering a complete, scalable, single-vendor solution for helping businesses understand and act on customer and operational information.

45. Beginning on January 24, 2000 and continuing until February 29, 2000, the Selling Defendants, while in possession of material adverse non-public information regarding the Company, again sold hundreds of thousands of shares of Sagent common stock and reaped millions of dollars of proceeds, as follows:

<u>Name</u>	<u>Dates</u>	<u># Shares</u>	<u>Prices</u>	<u>Proceeds</u>
Shanda Bahles	1/24/00- 2/9/00	309,767	\$20.17- \$24.14	\$6,650,058
Thomas Lounibos	2/18/00- 2/29/00	31,000	\$17.00- \$19.75	\$575,930

46. The stock sales set forth in paragraphs 43 and 45 were not part of any normal or regular pattern or practice of such sales by the Selling Defendants, but rather were unusual in timing and amount.

47. At the time of the stock sales set forth in paragraphs 43 and 45, each of the Individual Defendants knew that:

- a. Sagent was routinely shipping incomplete, defective, and/or non-functional products to customers, which customers were returning and/or refusing to pay for;
- b. Sagent was improperly recognizing revenue on sales of the aforementioned defective products when collection of payment for the products was not reasonably probable;
- c. Sagent was not adequately reserving for bad debts and uncollectible accounts receivable;
- d. contrary to both GAAP and Sagent's internal revenue recognition policy, Sagent was improperly recognizing license royalty revenue on sales of technology to original equipment manufacturers ("OEM's") (including, but not limited to, CommerceOne, Siebel Systems, and Interpath) prior to the

1 licensed technology being successfully integrated with the OEM's products
and sold through to end users;

2 e. Sagent's internal accounting was so deficient and disorganized that the
3 Accounting Department could not provide senior management with accurate
4 sales figures; and

5 f. demand for Sagent's products was not strong, and was declining rapidly, as
6 Sagent's salespeople were reporting to senior management that they would not
be able to meet their sales quotas for the first quarter of 2000.

7 48. On January 20, 2000, Donaldson, Lufkin & Jenrette analyst Joseph Farley ("Farley")
8 issued a report on Sagent after participating in a conference call with Sagent senior management,
9 including defendants Gardner and Walker. Farley reported that, "[m]anagement was extremely
10 positive on the conference call about the demand for its products and the pipeline in the upcoming
11 quarter."

12 49. On February 18, 2000, Farley issued another report on Sagent after speaking with
13 senior management, including defendants Gardner and Walker. Farley reported:

14 Checks over the last few days with the management at Sagent Technology as well as with our
15 sales and other contacts suggest to us that business for the quarter is tracking to plan. We
16 believe that the business remains healthy and the pipeline is robust. . . . The company is on
17 track to, at least, meet our expectations for the quarter. For first quarter 2000, we are looking
for revenues to grow 94% to \$17.4 million fueled by strong license revenue growth of 94%
or \$12.8 million. We estimate that fully diluted EPS should come in at \$0.04 vs. \$(0.05) a
year ago.

18 **The Truth Begins to be Revealed**

19 50. On April 18, 2000, Sagent issued a press release which stated in pertinent part:

20 Net revenue for the first quarter of 2000 was \$14.5 million, up 62% from the \$8.9 million
21 reported in the first quarter of 1999. Net loss for the first quarter of 2000 was \$2.0 million or
a loss of \$0.07 per basic and diluted share on 28.0 million shares and 27.8 million shares,
22 respectively. . . . "We are disappointed to have missed our revenue and earnings targets for
the quarter," said Ken Gardner, president and CEO. "In our Q1 review with our public
23 accountants, which was completed on Monday, we determined that two signed agreements,
totaling \$3.5 million, did not qualify for revenue recognition in the first quarter. We expect to
24 recognize this revenue during the remaining quarters of this year."

25 51. Sagent's April 18, 2000 announcement had an immediate material effect on the price
26 of Sagent common stock, which plunged more than 60%, from \$18.125 to \$7.22, on April 19, 2000.

27 52. Upon revelation of the true adverse conditions affecting the Company and its growth
28 prospects, several Sagent shareholders commenced securities fraud class actions against the

1 Company and its senior executive officers (naming as defendants some of the Individual Defendants
 2 in the instant action), alleging that the Company's public disseminations were materially false and
 3 misleading in violation of federal securities laws. These class actions have and will continue to
 4 expose the Company to enormous liability and costs.

5 **Sagent Continues to Disseminate Misleading and Inaccurate Information**

6 53. On May 10, 2000, Sagent announced that defendant Eliff had been hired as Chief
 7 Financial Officer to replace defendant Walker, who had left the Company.

8 54. On July 17, 2000, Sagent announced its financial results for the second quarter of
 9 2000, reporting revenues of \$17.5 million and net income of \$0.05 per share.

10 55. On August 8, 2000, Sagent announced that defendant Barnes had been hired as Chief
 11 Executive Officer to replace defendant Gardner, who became Chairman of the Board.

12 56. On October 12, 2000, Sagent issued a press release which stated in pertinent part:

13 Sagent Technology, Inc. (Nasdaq:SGNT) said today that it expects third quarter 2000
 14 revenues and earnings to be lower than the company's earlier expectations.

15 The company expects to report revenues in the range of \$13.5 million to \$14 million for the
 16 third quarter, and a pro forma loss per share from continuing operations in the range of \$0.19
 17 to \$0.21 per share on approximately 29 million shares outstanding. This compares to
 18 revenues of \$13.1 million and a loss of \$0.02 per share on approximately 27.5 million shares
 outstanding reported for the third quarter of 1999. In addition, the company will take a non-
 recurring charge of an additional (\$0.06) per share associated with the recruitment and hiring
 of new management.

19 "We are very disappointed in our quarterly revenue performance," said Ben Barnes, president
 20 and CEO. "Strengthening our sales execution has been my top priority since joining the
 21 company in mid-August, and we are making progress. We are hiring, training and deploying
 experienced salespeople as quickly as is practical. I pledge to our shareholders that everyone
 here at Sagent is committed to dramatically improving our execution as quickly as possible."

22 57. On October 24, 2000, Sagent issued a press release which stated in pertinent part:

23 Sagent Technology, Inc. (Nasdaq: SGNT), today announced results for the company's third
 24 quarter ended Sept. 30, 2000.

25 Sagent's net revenue for the third quarter of 2000 was \$13.8 million, compared with revenue
 26 of \$13.1 million reported in the third quarter of 1999. Sagent's net loss for the third quarter of
 2000, excluding non-recurring charges associated with the recruitment and hiring of new
 27 management, was \$6.9 million, or a loss of \$0.24 per share, compared with a net loss of
 \$516,000, or a loss of \$0.02 per share in the third quarter of 1999. Including the charges of
 28 \$1.5 million related to new management, the net loss for the third quarter of 2000 was \$8.4
 million, or a loss of \$0.29 per diluted share.

"I have initiated several key short-term objectives here at Sagent, designed to streamline our organization and to improve our sales execution, while we continue to work aggressively to better serve our customers," said Ben Barnes, president and CEO. "This company is focusing on growth opportunities and on building profitability. I look forward to updating you on our progress each quarter."

58. On November 13, 2000, *The Wall Street Transcript* published an interview with defendant Barnes during which he stated that:

- a. Defendant Eliff was hired as CFO to "bring a lot more rigor in terms of not only financial control, but overall operational control."
- b. He would be hiring an entirely new management team for sales and marketing.
- c. Sagent had to "transition into a more mature and disciplined company."
- d. He was "focused on fixing, correcting, or enhancing . . . the sales and marketing effort."
- e. Sagent needed to recognize "that if you really want to scale and become a large company, there has to be some amount of both strategic planning and financial discipline. You can't do this by the seat of your pants, so to speak."

Thus, Barnes essentially admitted that Sagent's financial controls were inadequate and had to be overhauled.

59. On February 5, 2001, Sagent issued a press release announcing its financial results for the fourth quarter of 2000, reporting revenues of \$12.3 million and a net loss of \$(0.37) per share.

The press release stated in pertinent part:

"During my first five months at Sagent, I have devoted a significant amount of time and energy re-building and revitalizing the sales and marketing organizations," said Ben Barnes, president and CEO, Sagent. "We have been very successful in recruiting some of the industry's most talented business intelligence sales and marketing individuals. Our new team is now fully staffed and engaged in the marketplace."

"In addition to changes in the direct sales team, we have established a new telemarketing organization to market to our vast customer base and a new business development organization to establish partnerships with industry leaders," Barnes added.

"We're already beginning to see the benefits of our reorganization and recruiting efforts," Barnes said. "Sagent's new accounts in the United States during the fourth quarter included wins at IBM, Microsoft, Yahoo!, U.S. National Gallery, and the City of Santa Clara, among others."

"Internationally, we are gaining traction," Barnes said, "particularly in Asia Pacific, where we won 26 new accounts in the fourth quarter alone, including Japan Telecom, Fujitsu and

1 Singapore Health. We also just brought on a new executive vice president and president for
2 Europe, who previously led IBM's European business intelligence solutions division, to help
us further penetrate market opportunities in Europe."

3 "In addition to growing revenues during fiscal 2001, a key objective continues to be
4 maximizing shareholder value," said David Eliff, executive vice president and CFO, Sagent.
"As a result, we've recently taken steps to streamline our operations and significantly reduce
5 our operating costs. This should speed our return to profitability."

6 "We are also pleased to announce that we are in final negotiations for significant additional
7 funding to be completed in the next few weeks, which includes a group of influential
8 financial investors and a strategic partner," Eliff said. "This additional funding improves our
cash position and strengthens our balance sheet, providing the working capital to allow our
9 new management team to execute as planned."

10 "Additionally, we are beginning to see the results of our recently developed analytical
11 solutions framework in such markets as financial services and insurance, including a Q4 win
at Provident Federal Credit Union," Barnes said. "Business intelligence and analytic
12 applications represent a large market opportunity, and we intend to take full advantage of this
in 2001."

13 60. On May 10, 2001, Sagent announced its financial results for the first quarter of 2001,
reporting revenues of \$11 million and a net loss of \$(0.30) per share.

14 61. From May 15 to 17, 2001, the Selling Defendants, while in possession of material
15 adverse non-public information regarding the Company, again sold hundreds of thousands of shares
16 of Sagent common stock, as follows:

<u>Name</u>	<u>Dates</u>	<u># Shares</u>	<u>Prices</u>	<u>Proceeds</u>
Shanda Bahles	5/16/01- 5/17/01	500,000	\$1.14- \$1.24	\$596,300
Kenneth Gardner	5/15/01- 5/17/01	100,000	\$1.26- \$1.43	\$129,390

17 These stock sales were not part of any normal or regular pattern or practice of such sales by the
18 Selling Defendants, but rather were unusual in timing and amount.

19 62. At the time of the stock sales set forth in the preceding paragraph, each of the
20 Individual Defendants knew that:

- 21 a. defendants Barnes and Eliff did not "bring a lot more rigor" to Sagent's
22 internal accounting and operational controls, as Sagent's internal controls
were as lax and deficient as they had ever been;
- 23 b. Sagent was not "speed[ing] [its] return to profitability," but rather would
24 continue to report losses for the foreseeable future due to poor demand for its

1 products; and

2 c. Sagent's reported sales figures were materially inaccurate and misleading, as
3 they included millions of dollars of bogus sales to government agencies.

4 63. On May 17, 2001, *InfoWorld Daily News* published an interview with defendant
5 Barnes during which he stated:

6 When I got here, not only was there no business development going on but the direct sales
7 force was in disarray. A number of bad hires had been made. I have replaced all the senior
8 management except for the founder, who's now working only on technology. I have a new
9 CFO, a new senior head of sales, a new general manager of Europe, and we've replaced all
10 the area vice presidents in the United States. So what keeps me up at night is how long will it
11 take this transition, which is pretty dramatic, to get traction and begin to show the revenue
12 top-line growth that I know that this team can deliver? My analogy would be to a football
13 team. I'm the new coach. I've got a lot of new players; we've got a new playbook. So the
14 question is how long is it going to take us before we begin to execute well as a new
15 management team and a new sales team?

16 64. On August 2, 2001, Sagent issued a press release announcing its financial results for
17 the second quarter of 2001, reporting revenues of \$13.3 million and a net loss of \$(0.15) per share.

18 The press release stated in pertinent part:

19 "Our hard work is beginning to show positive results, and I am pleased with the momentum
20 demonstrated this quarter," said Ben Barnes, president and CEO, Sagent. "We have brought
21 in experienced business intelligence sales and marketing management; developed a clear and
22 concise strategy and product roadmap; begun important initiatives with business partners;
23 and substantially reduced our operating costs."

24 ...

25 "Our direct sales force brought on-board more than 50 new customers during the second
26 quarter," Barnes said. "We are pleased with the overall strength and financial health of our
27 blue-chip customer base."

28 ...

Sagent provides the following guidance for the third quarter, ending Sept 30, 2001: revenues
are expected to increase sequentially to between \$14 million and \$15 million, with a net loss
before amortization of stock-based compensation, goodwill, and interest and taxes expected
to be in the range of \$0.08 to \$0.10 per share.

65. On October 30, 2001, Sagent issued a press release announcing its financial results
for the second quarter of 2001, reporting revenues of \$14.5 million and a net loss of \$(0.18) per
share. The press release stated in pertinent part:

"The third quarter was a challenging one for Sagent. Having been one of the only
organizations in the Business Intelligence market to achieve growth in Q2 over Q1, we were
tasked with meeting even higher expectations during Q3, a time of economic uncertainty,

1 even before the September 11 terrorist attacks," said Ben Barnes, president and CEO, Sagent.
 2 "I am proud to say that Sagent employees worldwide rallied in the face of this adversity and
 3 continued to close deals through the end of the quarter leading us to meet our revenue
 4 expectations."

5 For the fourth quarter 2001, Sagent expects to see revenues in the range of \$16 million range,
 6 with gross margins in the range of 75 percent and a net loss before depreciation, amortization
 7 of stock-based compensation, and goodwill, asset impairment and charges, interest and taxes
 8 in the range of \$0.04 to 0.06 per share.

9 **Sagent Restates Its Financial Results for Each of the First Three Quarters of 2001**

10 66. On November 14, 2001, Sagent issued a press release which stated in pertinent part:

11 Sagent (Nasdaq:SGNT), a leading provider of enterprise Business Intelligence solutions,
 12 today announced it is currently conducting an internal investigation of the validity of sales
 13 orders to government agencies booked by a single sales person in the Washington, D.C.,
 14 office.

15 The company has discovered information indicating that a sales order totaling \$1.1 million
 16 recognized as revenue in the third quarter of 2001 may not be valid. As a result of this
 17 information, Sagent is reviewing all sales orders booked by the same individual for which
 18 revenue has been booked but payment has not yet been received. If these sales orders are
 19 found to be invalid, there is potential for a restatement of revenues recognized in the first
 20 nine months of 2001 totaling \$4.9 million. It is possible that a restatement and the failure to
 21 collect anticipated receivables would have a material effect on the company. At this point in
 22 time, Sagent has no reason to believe that this matter will affect the previously reported
 23 December 31, 2000 results. Sagent is reviewing actions necessary, including additional
 24 expense reductions, to ensure that the company continues toward its previously stated goals
 25 for profitability and liquidity. At this point in time, the company does not have information,
 26 nor does it expect, that other sales orders not attributable to this individual are similarly
 27 affected. Sagent is working diligently toward completing its investigation in a timely fashion.
 28 Upon completion of the investigation and a thorough review of all of the facts, Sagent will
 hold a conference call to discuss its findings.

67. Sagent's November 14, 2001 announcement had an immediate material effect on the
 price of Sagent common stock, which fell nearly 39%, from \$1.29 to \$0.79, on November 15, 2001.

68. On November 15, 2001, Sagent announced that it had hired Steven R. Springsteel to
 replace defendant Eliff as Chief Financial Officer. Thus, Springsteel is the Company's third CFO in
 the last 18 months.

69. On November 28, 2001, Sagent issued a press release which stated in pertinent part:

Sagent (Nasdaq:SGNT), a leading provider of enterprise Business Intelligence solutions,
 today announced it is revising revenues for the first nine months of 2001 as a result of an
 internal investigation into the validity of sales orders to various government agencies.

The investigation efforts led by Sagent in conjunction with its outside counsel and independent accountants, confirmed that sales orders booked by one of its employees in its Washington, D.C. office to government agencies from the first through third quarters of 2001, totaling approximately \$5 million, were forged and determined to be invalid. Sagent is reducing its first quarter reported revenue from \$11.0 million to \$10.3 million, its second quarter reported revenue from \$13.3 million to \$12.5 million, and its previously announced third quarter revenue from \$14.5 million to \$11.4 million. See the attached financial statements for further disclosure.

Sagent will be notifying the affected government agencies of the results of the company's investigation and will pursue legal action against the responsible employee. The company believes that the booking of the fraudulent sales orders is limited to the one individual and does not have information, nor does it expect, that other sales orders not attributable to this individual are similarly affected. In the forthcoming weeks, Sagent will reduce its headcount by approximately 20 percent and will initiate other cost reductions to achieve its previously stated goals for profitability and liquidity of EBITDA breakeven in Q2 2002, and EPS and cash flow positive in Q3 2002.

On November 21, 2001, Sagent was notified by the NASDAQ Listing Qualifications Department that it has become subject to NASDAQ delisting procedures as a result of the company's failure to file the Form 10-Q for the third fiscal quarter ending September 30, 2001, in accordance with NASDAQ Rule 4310(e)(14). The Sagent Form 10-Q for this period was not filed due to the previously discussed investigation of certain sales orders. The company's trading symbol has been appended with an "E", beginning November 26, 2001. The company is working cooperatively with the NASDAQ staff and has requested a hearing with the NASDAQ Listing Qualifications Panel. As a result of this hearing, any action by the NASDAQ to delist the company's common stock will be stayed pending a decision by the NASDAQ Listing Qualifications Panel. The company believes that these actions will provide adequate time for Sagent to complete and file the September 30, 2001 10-Q and restated 10-Q's for the first and second quarters of 2001.

70. On November 28, 2001, Sagent announced that it was restating its results for each of the first three quarters of 2001 as follows:

	<u>Revenues (millions)</u>		<u>Earnings (Loss) Per Share</u>	
	<u>as Reported</u>	<u>as Restated</u>	<u>as Reported</u>	<u>as Restated</u>
First Quarter	\$11.0	\$10.3	\$(0.30)	\$(0.32)
Second Quarter	\$13.3	\$12.5	\$(0.17)	\$(0.19)
Third Quarter	\$14.5	\$11.4	\$(0.24)	\$(0.31)

71. By restating its financial results for each of the first three quarters of 2001, Sagent has admitted that its results were materially inaccurate when reported.

72. As a direct and proximate result of the Individual Defendants' wrongful conduct, Sagent common stock currently trades at approximately \$1 per share, a stunning **96% less** than its value two years ago. In total, the Individual Defendants are directly responsible for Sagent's loss of

1 nearly *\$1 billion* in market capitalization.

2 **KPMG's Role in Defendants' Misconduct**

3 73. During its yearly audits and quarterly reviews of Sagent's books, records and financial
4 statements, members of KPMG's engagement team had virtually limitless access to information
5 concerning Sagent's true financial condition. KPMG was present at Sagent's headquarters frequently
6 throughout the year, had unfettered access to Sagent documents and employees, and had
7 conversations with Sagent management and employees about Sagent's financial reporting and
8 accounting practices.

9 74. KPMG knew or recklessly disregarded that Sagent's accounting practices were not in
10 conformity with GAAP and failed to conduct audits of Sagent's financial statements in accordance
11 with Generally Accepted Auditing Standards ("GAAS").

12 **DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS**

13 75. Plaintiff brings this action derivatively in the right and for the benefit of Sagent to
14 redress injuries suffered and to be suffered by Sagent as a result of the statutory violations, breaches
15 of fiduciary duty, violations of law, waste of corporate assets, abuse of control, and gross
16 mismanagement, as well as the aiding and abetting thereof, by the Individual Defendants. This is
17 not a collusive action to confer jurisdiction on this Court which it would not otherwise have.

18 76. Plaintiff will adequately and fairly represent the interests of Sagent and its
19 shareholders in enforcing and prosecuting its rights.

20 77. Plaintiff is an owner of Sagent common stock and was an owner of Sagent common
21 stock at all times relevant to the Individual Defendants' wrongful course of conduct alleged herein.

22 78. As a result of the facts set forth herein, and additionally pursuant to California
23 Corporations Code §800(b)(2), plaintiff has not made any demand on the Sagent Board of Directors
24 to institute this action against the Individual Defendants. Such demand would be a futile and useless
25 act because the Board is incapable of making an independent and disinterested decision to institute
26 and vigorously prosecute this action for the following reasons:

- 1 A. Three Board members, defendants Gardner, Bahles, and Zicker, directly
2 benefitted from their improper conduct when they sold Sagent common stock
3 while in possession of material, adverse non-public information, collectively
4 reaping proceeds in excess of \$23 million. Accordingly, defendants Gardner,
5 Bahles, and Zicker are directly interested in the transactions that are the
6 subject of this action, and therefore are legally incapable of considering a
7 demand to commence and vigorously prosecute this action;
- 8 B. The principal professional occupation of defendant Barnes is his employment
9 with Sagent, pursuant to which he has received and will continue to receive
10 substantial monetary compensation and other benefits. Accordingly,
11 defendant Barnes is therefore beholden to the other members of the Board to
12 maintain his employment position with Sagent, which renders him incapable
13 of impartially considering a demand to commence and vigorously prosecute
14 this action;
- 15 C. Defendant Luft has a long-standing pattern of mutually advantageous business
16 relationships with Sagent and Sagent Germany, as described herein, which
17 renders him incapable of impartially considering a demand to commence and
18 vigorously prosecute this action;
- 19 D. Despite their knowledge of the wrongdoing alleged herein, the directors of
20 Sagent have not taken action to seek recompense from the wrongdoers who
21 have caused harm to the Company, including, but not limited to, the Selling
22 Defendants;
- 23 E. There is a substantial likelihood that the members of the Audit Committee,
24 defendants Bahles, Boisvert, and Maib, will be held personally liable for
25 damages the Company has sustained and will sustain as a result of their
26 breaches of fiduciary duties; and
- 27 F. Sagent's directors' and officers' liability insurance coverage has an "insured
28 vs. insured" exclusion. Thus, if the Individual Defendants caused Sagent to
sue its officers and directors for the liability asserted in this case, they would
not be insured for that liability. They will not do this to themselves. The
Sagent officers' and directors' liability insurance was purchased and paid for
with corporate funds for the protection of the corporation. This derivative
action does not trigger the "insured vs. insured" exclusion, and therefore only
this derivative action can obtain a recovery from Sagent's officers' and
directors' insurance for the benefit of the corporation.

COUNT I

AGAINST THE SELLING DEFENDANTS FOR VIOLATION OF CALIFORNIA CORPORATIONS CODE SECTION 25402

79. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set forth fully herein.

80. At the time of the stock sales set forth herein, each of the Selling Defendants knew the information described in paragraphs 47 and 62 above.

81. The information described in paragraphs 47 and 62 was proprietary non-public information concerning the Company's financial condition and future business prospects. It was a proprietary asset belonging to the Company, which the Selling Defendants used for their own benefit when they sold Sagent common stock at prices higher than they could have obtained had the market been aware, as they were, of the true state of the Company's finances and future prospects.

82. In selling shares of Sagent common stock while in possession of material adverse non-public information, the Selling Defendants violated California Corporations Code Section 25402, and are therefore liable to Sagent pursuant to California Corporations Code Section 25502.5(a) for damages in an amount equal to three (3) times the difference between the prices at which the Selling Defendants sold their Sagent shares and the market value at which such shares would have sold had the material non-public adverse information known to the Selling Defendants been publicly disseminated.

COUNT II

**AGAINST THE SELLING DEFENDANTS FOR BREACH OF FIDUCIARY
DUTIES FOR INSIDER SELLING AND MISAPPROPRIATION OF INFORMATION**

83. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if fully set forth herein.

84. At the time of the stock sales set forth herein, the Selling Defendants knew or had reason the information described in paragraphs 47 and 62 above.

85. The information described in paragraphs 47 and 62 was proprietary non-public information concerning the Company's financial condition and future business prospects. It was a proprietary asset belonging to the Company, which the Selling Defendants used for their own benefit when they sold Sagent common stock at prices higher than they could have obtained had the market been aware, as they were, of the true state of the Company's finances and future prospects.

86. At the time of their stock sales, the Selling Defendants knew that the Company's business and prospects were diminishing, which when reported would cause the price of the Company's common stock to dramatically decrease. The Selling Defendants' sales of Sagent

1 common stock while in possession and control of this material adverse non-public information was a
2 breach of their fiduciary duties of loyalty and good faith.

3 87. Since the use of the Company's proprietary information for their own gain constitutes
4 a breach of the Selling Defendants' fiduciary duties, the Company is entitled to the imposition of a
5 constructive trust on any profits the Selling Defendants obtained thereby.

6 88. Plaintiff has no adequate remedy at law.

7 **COUNT III**

8 **AGAINST ALL INDIVIDUAL DEFENDANTS**
9 **FOR BREACH OF FIDUCIARY DUTIES FOR DISSEMINATION**
10 **OF MISLEADING AND INACCURATE INFORMATION**

11 89. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set
12 forth fully herein.

13 90. As alleged in detail herein, each of the Individual Defendants had a duty to ensure
14 that Sagent disseminated accurate information to the market.

15 91. Each of the Individual Defendants violated the fiduciary duties of care, loyalty, and
16 good faith by causing or allowing the Company to disseminate to the market materially misleading
17 and inaccurate information through public statements, as alleged herein.

18 92. Each of the Individual Defendants failed to disclose the material adverse information
19 described herein so that the Company's stock price would trade at artificially inflated prices and the
20 Selling Defendants could sell their personal holdings of Sagent common stock at inflated prices.

21 93. Each of the Individual Defendants failed to correct the Company's publicly reported
22 financial results and guidance, and aided and abetted in the Selling Defendants' use of material
23 adverse non-public information to sell their personal holdings of Sagent common stock at inflated
24 prices. These actions could not have been a good faith exercise of prudent business judgment to
25 protect and promote the Company's corporate interests.

26 94. As a direct and proximate result of the Individual Defendants' foregoing breaches of
27 fiduciary duties, Sagent has suffered damages, including, but not limited to, damages associated with
28 the Selling Defendants' stock sales, the Company's internal investigation and restatement of

1 financial results.

2 95. Plaintiff has no adequate remedy at law.

3 **COUNT IV**

4 **AGAINST ALL INDIVIDUAL DEFENDANTS FOR WASTE OF CORPORATE ASSETS**

5 96. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set
6 forth fully herein.

7 97. During the term of the wrongdoing alleged herein, the Individual Defendants
8 occupied positions within the Company that made them privy to confidential, proprietary
9 information concerning the Company's financial condition and future business prospects, as
10 described herein. The foregoing information was a proprietary asset belonging to the Company,
11 which the Selling Defendants, aided and abetted by the remaining Individual Defendants, used for
12 their own benefit and to the detriment of the Company and its shareholders.

13 98. The Company received no consideration in exchange for the Selling Defendants' use
14 of the Company's confidential, proprietary information concerning its financial condition and future
15 business prospects.

16 99. Each of the Individual Defendants individually and/or jointly committed one or more
17 of the acts or omissions to act as alleged herein and aided and abetted in the Selling Defendants' use,
18 without consideration to the Company, of material adverse non-public information to sell their
19 personal holdings of Sagent common stock at inflated prices for their own benefit and to the
20 detriment of the Company and its shareholders, which constituted a waste of corporate assets.

21 100. As a direct and proximate result of the Individual Defendants' waste of corporate
22 assets as alleged herein, Sagent has sustained damages, as alleged herein.

23 101. Plaintiff has no adequate remedy at law.

24 ///

25 ///

26 ///

27 ///

28 VERIFIED DERIVATIVE COMPLAINT

COUNT V

**AGAINST ALL INDIVIDUAL DEFENDANTS FOR BREACH
OF FIDUCIARY DUTY FOR FAILURE TO ESTABLISH
AND MAINTAIN ADEQUATE ACCOUNTING CONTROLS**

102. Plaintiff incorporates by reference all previous and subsequent paragraphs as if set forth fully herein.

103. As alleged in detail herein, each of the Individual Defendants had a duty to Sagent and its shareholders to establish and maintain adequate internal accounting controls to ensure that the Company's financial results were recorded in compliance with GAAP and SEC rules and regulations.

104. The Individual Defendants did not establish and maintain adequate internal accounting controls at Sagent and did not make a good faith effort to do so; thus, they abdicated their responsibilities to prudently supervise the operations of Sagent and its senior management.

105. As a direct and proximate result of the Individual Defendants' failure to perform their fiduciary obligations, Sagent engaged in imprudent and unlawful activities which have caused Sagent to suffer damages, as alleged herein.

106. Plaintiff has no adequate remedy at law.

COUNT VI

AGAINST ALL INDIVIDUAL DEFENDANTS FOR ABUSE OF CONTROL

107. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set forth fully herein.

108. The Individual Defendants' misconduct alleged herein constituted an abuse of their ability to control and influence Sagent, for which they are legally responsible.

109. As a direct and proximate result of the Individual Defendants' abuse of control, Sagent has sustained damages, as alleged herein.

110. Plaintiff has no adequate remedy at law.

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COUNT VII

AGAINST ALL INDIVIDUAL DEFENDANTS FOR GROSS MISMANAGEMENT

111. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set forth fully herein.

112. By their actions alleged herein, the Individual Defendants, either directly or through aiding and abetting, abandoned and abdicated their responsibilities and fiduciary duties with regard to prudently managing the assets and business of Sagent in a manner consistent with the operations of a publicly held corporation.

113. As a direct and proximate result of the Individual Defendants' gross mismanagement and breaches of duty alleged herein, Sagent has sustained damages, as alleged herein.

114. Plaintiff has no adequate remedy at law.

COUNT VIII

AGAINST KPMG, LLP FOR BREACH OF CONTRACT

115. Plaintiff incorporates by reference all previous and subsequent paragraphs as if set forth fully herein.

116. At all times relevant hereto, KPMG and Sagent were parties to written contracts pursuant to which KPMG agreed to provide audit services to Sagent in accordance with Generally Accepted Auditing Standards ("GAAS").

117. KPMG breached its contracts with Sagent by, among other things, failing to render services in accordance with GAAS and preparing and/or approving financial statements that were not prepared in accordance with GAAP.

118. As a direct and proximate result of KPMG's breaches of contract, Sagent has sustained damages, as alleged herein.

119. Plaintiff has no adequate remedy at law.

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COUNT IX

AGAINST KPMG, LLP FOR PROFESSIONAL NEGLIGENCE

120. Plaintiff incorporates by reference all previous and subsequent paragraphs as if set forth fully herein.

121. At all times relevant hereto, KPMG, as Sagent's auditor, owed to Sagent the duties of due care and professional competence.

122. KPMG breached its duties of due care and professional competence by, among other things, failing to render services to Sagent in accordance with GAAS and preparing and/or approving financial statements that were not prepared in accordance with GAAP.

123. As a direct and proximate result of KPMG's breaches of contract, Sagent has sustained damages, as alleged herein.

124. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands judgment as follows:

- A. Determining and awarding Sagent treble damages pursuant to California Corporations Code § 25502.5(a) for the Selling Defendants' violations of California Corporations Code § 25402;
- B. Imposition of a constructive trust in favor of the Company for the amount of profits each of the Selling Defendants received from their sales of Sagent common stock alleged herein;
- C. Against all of the Individual Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties, waste of corporate assets, abuse of control, and gross mismanagement;
- D. Against KPMG, LLP and in favor of the Company for the amount of damages sustained by the Company as a result of KPMG's breaches of contract and professional negligence;
- E. Awarding to plaintiffs the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and
- F. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: February 8, 2002

Respectfully submitted,

By: 

Robert A. Jigarjian

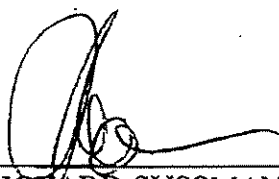
Robert S. Green
Robert A. Jigarjian
GREEN FAUTH & JIGARJIAN, LLP
235 Pine Street, 15th Floor
San Francisco, California 94104
Telephone: (415) 477-6700
Facsimile: (415) 477-6710

Of Counsel:
SCHIFFRIN & BARROWAY, LLP
Robert B. Weiser
Eric L. Zagar
Three Bala Plaza East, Suite 400
Bala Cynwyd, PA 19004
(610) 667-7706

VERIFICATION

I, RICHARD SUSSMAN, hereby verify that I have reviewed the Complaint and authorized its filing and that the foregoing is true and correct the best of my knowledge, information and belief.

DATED: February 6, 2002



RICHARD SUSSMAN